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MARKETING OF LEGAL SERVICES WITH REFERENCE  
TO RESIDENTIAL PROPERTIES IN HONG KONG  
(Confidential for a period of 5 years)

By

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MBA PROJECT REPORT

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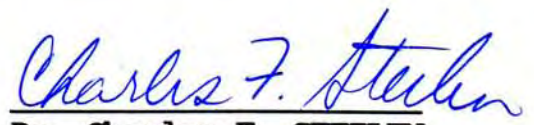
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## ABSTRACT

Conveyancing of residential properties (i.e. transfer of ownership of real estate) in Hong Kong represents a major source of income for many solicitors' firms in Hong Kong. The conveyancing market in Hong Kong is currently booming and competitive. Solicitors' firms seeking to maintain and expand their market shares must understand clients' needs and monitor how these change over time.

It has been shown that there is a strong and stable demand for residential properties and hence conveyancing services. In Hong Kong conveyancing is monopolized by solicitors so that one cannot complete the purchase of a property without solicitors.

The typical process of a property transaction is analysed. Generally there are two kinds of property transactions: first sale by a property developer and subsequent sale by an individual owner. It is recommended that solicitors should focus their marketing efforts on developers for first sales and on estate agents and banks for subsequent sales.

As from 20th March 1992 solicitors in Hong Kong are permitted to promote their legal practice subject to certain restrictions in the solicitors' Practice Promotion Code. In order to assess whether advertising helps a solicitor promote his conveyancing service, the writer has conducted interviews on 2 advertising professionals. Further, an advertisement copy (designed by an advertising professional) has been shown to current home owners (i.e. people who have purchased conveyancing services) to

assess clients' attitudes and responses to advertising by solicitors. the responses are divided: some home owners report a positive response while some report a negative response. The writer recommends that a solicitors' firm should not advertise its practice before positive results are found in an extensive market research focusing on this particular aspect.

In addition to the legal constraints on promotion, the writer discusses legal constraints on product, price and place. In view of the various constraints, the writer recommends that a solicitors' firm should:-

- (1) consciously make itself a market-driven organization focusing on clients' needs rather than the "4Ps", i.e. product, price, place and promotion; and
- (2) focus its marketing efforts on relationship management: managing its relation with property developers, estate agents, banks and clients.

In doing so the solicitors' firm should:-

- (1) recruit only those contact employees (i.e. solicitors, clerks and every member of the firm having direct contacts with clients) with the right social abilities;
- (2) encourage and teach trust-building activities on the part of all contact employees;
- (3) appoint a relationship manager for each of the firm's major clients and referral sources;
- (4) develop a corporate mission that emphasizes on satisfaction of clients' needs.



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## CHAPTER I

### INTRODUCTION

#### Need for Marketing of Legal Services

Traditionally solicitors just sit in their offices waiting for telephone calls from their clients.

Now the market environment has changed. Solicitors have been confronted with the following changes<sup>1</sup>:-

#### 1. A Revised Legal and Ethical Climate

With effect from 20th March 1992, a solicitor in Hong Kong may engage in practice promotion in any way he thinks fit, subject to the Solicitors' Practice Promotion Code<sup>2</sup>. Thus, advertising by solicitors is generally permitted. This is the exact reverse of the previous rule against practice promotion by solicitors.

Experience in U.S.A. shows that the newfound freedom to advertise by professionals has sparked a wave of intensifying promotional and competitive activity in most of the professions like attorneys, doctors, dentists and accountants. Many professional service organizations in U.S.A. are finding that their survival hinges on being able to compete in this new climate. There is reason to expect similar developments in this direction in Hong Kong.

## 2. An Increasing Supply of Solicitors

The rate of increase of solicitors in private practice is far greater than the rate of increase of population in Hong Kong. From 1988 to 1991 the average annual rate of increase of solicitors in private practice is 6.8% (see Table 1). From 1986 to 1991 the average annual rate of increase of population in Hong Kong is 0.8%<sup>3</sup>.

Table 1

### NUMBER OF SOLICITORS IN PRIVATE PRACTICE IN HONG KONG

Year	Number of Solicitors in private practice in Hong Kong	Percentage increase compared with preceding year
30-9-1988	1675	
30-9-1989	1807	+7.9%
30-9-1990	1912	+5.8%
30-9-1991	2041	+6.7%
24-2-1992	2221	+8.8%*

Source: Annual Report of the Law Society of Hong Kong 1992,  
Page XI.

\* For 147 days only from 30th September 1992 to 24th February 1992.

By extrapolation the annual percentage increase by 30th September 1992 will be +21.9%

Thus the average number people in Hong Kong served by one solicitor is continuously decreasing. Competition among solicitors has become keener and keener. As of 15th March 1991 (on which date the 1991 Census in Hong Kong was based<sup>4</sup>) there was one solicitor per 2870 people in Hong Kong.<sup>5</sup>



Further, foreign lawyers are expected to be allowed to practise in Hong Kong in late 1993<sup>6</sup>. Legislation introducing new schemes for regulating foreign lawyers and admitting non-Hong Kong qualified lawyers is expected to be introduced in the 1992/93 legislative session. The new legislation is expected to take effect "probably in late 1993" according to a Law Society Spokesman. Thus solicitors expect an even keener competition: admission of foreign lawyers to practice in Hong Kong will mean a significant increase in supply of legal services in Hong Kong. Solicitors' firms wishing to maintain and develop their market share must plan and act now.

### 3. Rise of Consumers

Traditionally solicitors in Hong Kong enjoy high esteem and social status. However in recent years the number of complaints against solicitors has steadily increased.

In 1989 the Law Society of Hong Kong opened 245 files in this connexion. In 1991 the number rose to 317, an increase of 29%<sup>7</sup>. The increase in general enquiries has been even more marked. Only 90 files were opened in 1989, but by 1991 this had gone up to 374, an increase of over 300% over the 3-year period<sup>8</sup>. 71% of all complaints related to conveyancing practice<sup>9</sup>.

The figures reveal that more and more clients appreciate their rights as consumers and expect to have their needs satisfied.

Further, the Consumer Council in Hong Kong plays an increasingly significant role in arousing consumers to appreciate their rights. Recently the Consumer Council published complaints against several property developers in its Choice Magazine, March 1992 edition. The complaints relate to the alleged exaggeration of floor area of properties being sold by the property developers. It is not surprising if one day the Consumer Council publishes complaints against solicitors generally or some named solicitors firms.

Clearly, solicitors need to improve the satisfaction levels of their clients under such trend: A damaged image could be irreparable. Positive and active steps must be taken now.



## CHAPTER II

### RESIDENTIAL PROPERTY MARKET ANALYSIS<sup>10</sup>

#### Overview

In Hong Kong the conveyancing market is monopolized by solicitors. One cannot complete the purchase of real estate without solicitors. This is in contrast with the position of other countries. For example, in England a purchaser of real estate may complete his purchase through either a solicitor or through an estate agent.

To a typical solicitors' firm in Hong Kong, conveyancing business represents an important (in many cases major) source of income.

Purchasing a flat is an investment for the long term and for many prospective buyers it represents the most important financial commitment of their lifetime. Despite the uncertainties relating to 1997, the property market has not shown any sign of slowdown or contraction. On the contrary, residential property prices has been increasing over the past few years. In particular, property prices rose by 15% in March 1992 compared with that in December 1991<sup>11</sup>.

Government statistics show that the number of property owners in Hong Kong has grown significantly in recent years.

In 1988 there were 1,116,208 people in Hong Kong living in their own house. This was approximately 1 in 5. In other words,



on the average there was 1 home owner in every 5 persons. Further the total number of sale and purchase agreements registered rose to 66,483, an increase of 21.2 percent over 1987<sup>12</sup>. In addition, the percentage of owner-occupier had been steadily increasing from 18.1% to 42.7% over the 20-year period from 1971 to 1991 (see Table 2).

Table 2  
LAND DOMESTIC HOUSEHOLDS BY TENURE, 1971-1991 CENSUSES

	Tenure
	Owner-occupier
1971 Census	
No. of Households	152 874
% of Households	18.2
1976 By-Census	
No. of Households	229 620
% of Households	23.2
1981 Census	
No. of Households	345 026
% of Households	27.9
1986 By-Census	
No. of Households	506 926
% of Households	35.1
1991 Census	
No. of Households	673 067
% of Households	42.6

Source: Hong Kong Annual Digest of Statistics, 1991, Census and Statistics Department.

All the above data point to a strong and stable demand for residential properties and hence conveyancing services in Hong Kong.

The demand for residential properties depends on a number of factors, including the existence of a stable political framework and long-term economic prosperity. In the short term, the demand is largely influenced by changes in family structure and the propensity to purchase. The latter is linked to affordability - basically a function of property prices, mortgage terms and household income.

#### Change in Family Structure

The demand for domestic units depends on the formation of households.

In the 20-year period from 1971 to 1991, the average household size decreased gradually from 4.5 to 3.4 (see Table 3).

Table 3

#### AVERAGE HOUSEHOLD SIZES, 1971-1991 CENSUSES

	1971 Census	1976 By-Census	1981 Census	1986 By-Census	1991 Census
Total No. of Households	859,008	99,390	1,244,738	1,452,576	1,582,215
Average Household Size (No. of persons)	4.5	4.2	3.9	3.7	3.4

Source: Hong Kong Annual Digest of Statistics, 1991,  
Census and Statistics Department.

This trend reflects the preference and growing ability of newly married couples to acquire their own home rather than live with their parents. This leads to a strong demand for residential units



with area below 70 square meters<sup>13</sup>. In 1990, units in this category accounted for close to 81 percent of domestic stock<sup>14</sup>. They were demanded mostly by nuclear families, especially newly married couples.

The number of married persons has been steadily increasing over the 20-year period from 1971-1991 (see Table 4).

Table 4

NUMBER OF MARRIED MALE (M) AND FEMALE (F) IN HONG KONG

	1971 Census	1976 By-Census	1981 Census	1986 By-Census	1991 Census
M	710,133	833,140	1,059,856	1,207,549	1,333,049
F	770,520	877,800	1,001,503	1,162,301	1,290,860

Source: Hong Kong Annual Digest of Statistics, 1991,  
Census and Statistics Department.

It is clear that the increase in the number of marriages is closely correlated with the increase in the number of households. The above data point to continued growth in the demand for residential properties and hence conveyancing services.

#### Purchase Price Vs Rental

From the point of view of an individual requiring accommodation, the alternative to buying a domestic unit and mortgaging it so as to spread the payment over a long period of time is to rent the premises from a landlord. In such cases, the rental payments are analogous to mortgage payments on a loan to be repaid in perpetuity.



There is implicit in rental arrangements an interest rate which incorporates the concept of the cost of borrowing funds payable in perpetuity. It can be calculated as the ratio of annual rent payment to purchase price. The upper limit to this ratio should not exceed the mortgage rate, since if rents are permitted to rise too high, individuals would opt to purchase rather than rent.

The Property Review 1991 published by the Rating and Valuation Department contains data on the average price and rent of domestic units on a quarterly basis. Using the data for class "A" units (domestic units to below 40 square meters), we can calculate the implicit interest rates as in Table 5.

Table 5

RELATIONSHIP BETWEEN RENTAL PAYMENT AND PURCHASE PRICE  
CLASS A: DOMESTIC UNITS OF BELOW 40 METRES

Year		Average Rental/m <sup>2</sup> Monthly	Average Purchase Price/m <sup>2</sup>	Implicit Interest Rate*
		HK\$	HK\$	%
89	Q1	114.4	17,740	7.7
	Q2	125.9	18,503	8.2
	Q3	130.0	17,610	8.9
	Q4	139.9	18,616	9.0
90	Q1	141.1	20,030	8.5
	Q2	150.1	20,061	9.0
	Q3	148.8	20,903	8.5
	Q4	145.5	20,682	8.4

Source: Property Review 1991, Rating and Valuation Department, Hong Kong.

\* Calculated as the percentage of average annual rental to average purchase price.

In 1989 and 1990 the average mortgage rate ranged from 9.5% to 11.5%<sup>15</sup>. Since 1989 the implicit interest rate has been only moderately lower than the actual mortgage rate. This encourages households in need of accommodation to opt for purchasing rather than renting, thereby obtaining the property title and security of a relatively fixed payment schedule, instead of paying rentals to the landlord. Relatively low mortgage rates in recent years have provided an additional incentive for preferring to purchase rather than rent property.

#### Income

Real per capita GDP in Hong Kong increased at an average growth rate of 6.4 percent per annum between 1977 and 1987. The figures are shown in Table 6.

Table 6  
GROWTH OF REAL PER CAPITA GDP

Year	Real Per Capita GDP	% Growth
1977	22,062	
1978	23,723	7.5
1979	25,081	5.7
1980	27,075	8.0
1981	28,936	6.9
1982	29,350	1.4
1983	30,785	4.9
1984	33,374	8.4
1985	32,980	-1.2
1986	36,350	10.2
1987	40,665	11.0

Source: Hong Kong Monthly Digest Statistics, 1988,  
Census and Statistics Department



Growth has been particularly strong since 1986. In 1988, GDP growth was just over 7 percent in real terms. Between 1981 and 1988, median household income rose from HK\$3,084 to HK\$6,850 per month, an increase of 122 percent. It increased by a further 12 percent to HK\$7,740 a month in 1989 (see Table 7). Coupled with other factors such as speculation, the property market has been propelled to a historic high.

Further, many people in Hong Kong are benefited by the growth of economy in Shenzhen and other Southern-China cities and counties. Such growth of economy has brought investment, business and employment opportunities for people in Hong Kong. Such income may not be fully reflected by statistics of the Hong Kong Government. Hence, the actual household income of people in Hong Kong may well be higher than that shown in Statistics of the Hong Kong Government.

#### Affordability

Affordability means the capability of households to meet the cash flow requirements of funding a mortgage. Such a measure is dependent on income, property price and mortgage terms. To investigate affordability, we use the ratio of the average monthly mortgage repayment divided by the median household income.

Consider the case of a household that has decided to purchase a flat of 500 square feet. At 80 percent financing with repayment spreading over 15 years, the affordability ratios can be analysed as per Table 7. From this analysis, we can observe that the affordability ratio in 1988 is still far below the peak reached



Table 7

## ANALYSIS OF SMALL/MEDIUM SIZED RESIDENTIAL PROPERTIES

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>
No. of Units Built	14620	19700	24385	26335	22690	30975	20640	19020	20870	27950	31550	32360	34050	35700
No. of Units Taken-up	14655	18410	24445	21240	19300	16000	18100	24400	20650	27500	28500	32450	33000	32000
No. of Units Vacant	7130	8420	8085	12055	14980	26700	27300	21130	19535	19350	21400	20005	21055	24755
Total Stock Year-end	348295	365725	388480	416420	437600	467300	406000	501740	517375	544690	575265	606360	640410	676110
Vacancy Factor	2.04	2.30	2.08	3.08	3.42	5.73	5.62	4.21	3.77	3.55	3.72	3.29	3.28	3.66
Monthly Average Rent (HK\$/sq.ft.)	1.68	1.92	2.29	3.31	5.23	6.67	6.70	6.10	5.40	6.10	6.60	7.26	8.00	10.20
Average Sale Price (HK\$/sq.ft.)	298.00	340.77	419.76	721.81	930.92	1057.93	834.90	683.30	589.00	703.60	765.07	938.00	1200.0	1426.00
Inflation (Y-O-Y %)	3.3	5.9	5.9	11.7	15.5	15.8	10.6	9.8	8.2	3.2	3.3	5.5	8.5	10.0
Median Household Income (HK\$ Monthly)	N.A.	1612	1811	2213	2645	3084	3694	4194	4508	4930	5410	6096	6850	7740
Average Mortgage Rate (%)	7.50	6.25	7.25	13.75	15.00	18.75	15.50	13.50	13.75	9.50	8.25	8.00	9.25	11.25
Affordability Ratio *	N.A.	72.4	84.6	171.6	197.0	220.4	129.6	84.6	68.7	59.6	54.8	58.8	72.1	85.0

\* Affordability Ratio = Monthly Mortgage Payment/Monthly Median Household Income, on assumptions of acquiring a 500 sq.ft. apartment at prices and mortgage rates prevailing at the time with 80% financing over a 15-year period.

Source: Merrill Lynch, Pierce, Fenner & Smith Inc., Cheung Kong (Holdings) Ltd: Company Update & Outlook

For Residential Property in Hong Kong, 1989

in 1981. Thus it can be said that property prices and mortgage rates, though on a rising trend, have not reached the point where they will create a negative impact on the demand for residential property. Indeed, the vacancy factor showed a steady decrease from 1981 to 1988 (see Table 7), implying that the rate of absorption has been higher than the rate of supply.

### Conclusion

From the above analysis, it can be concluded that the demand for small/medium sized residential properties will be sustained in the near future. Hence, buyers sellers and mortgagee bankers and estate agents of such properties will become the prime prospects for conveyancing business.

This explains why many solicitors' firms focus their efforts on conveyancing of residential properties.

### CHAPTER III

#### TYPICAL CONVEYANCING PROCESS

Solicitors wishing to focus its marketing efforts regarding conveyancing business need to analyse the typical process through which sale and purchase of residential properties are transacted.

Generally there are two kinds of property transactions:

- (1) first sale by Property Developers; and
- (2) subsequent sale by individual sellers.

#### First Sale by Property Developers

In Hong Kong the demand for residential properties is so high that people are willing to buy units in an uncompleted development. This means that at the time when a Purchaser commits to buy a unit, the unit is not in physical existence. Typically the unit is somewhere in the air above the land held by the Developer-Seller. In order to get cash inflow as soon as possible, property developers offer to sell residential units in a building well before the building exists. It follows that the subject matter of first sale by property developers (compared with subsequent by individual sellers) is usually a unit in an uncompleted development.

A typical Provisional Contract is shown in Appendix 1. Normally the process of buying a unit in an uncompleted development is as follows:-

- (1) A purchaser chooses a unit with such intended area and at such price as may be available.



- (2) The purchaser and the Developer (or its agent) sign a Provisional Contract embodying terms largely in line with those outlined in Appendix 1.
- (3) The Purchaser pays a preliminary deposit (e.g. HK\$30,000 for a property priced at HK\$1,629,500) on the signing of the Provisional Contract.
- (4) On the Provisional Contract there are details of the Vendor's solicitors including its name, address, telephone number and contact person.
- (5) The purchaser is required to pay the Vendor a further deposit (together with the preliminary deposit amounting to 10% of the purchase price) within the next 4 days and sign a formal Sale and Purchase Agreement before a solicitor.
- (6) The Purchaser is required to pay the balance of purchase price (typically 90% of the purchase price) within 7 days after signing the formal Sale and Purchase Agreement. The Purchaser normally raises a loan from a bank and signs a mortgage deed in favour of the bank as security.
- (7) The Provisional Contract is in Chinese and in English and includes the following clauses:-
  - (i) "The Purchaser agrees to attend at the aforesaid Solicitors' (i.e. the Vendor's Solicitors') offices within 4 days from the date hereof to sign a formal Sale and Purchase Agreement, to pay the further deposit and to produce this Provisional Contract."
  - (ii) "Time shall in every respect be of the essence of this Provisional Contract."

- (iii) "If the Purchaser fails to sign the Agreement and/or pay any of the further deposits and balance of the purchase price as aforesaid, the Vendor shall be entitled to sell the above-mentioned premises to other party and to refund to the Purchaser the amount of any Preliminary Deposit already paid by the Purchaser less an amount not exceeding 1.5% of the purchase price of the above-mentioned premises in respect of which he signed the Provisional Contract. In that event, this Provisional Contract shall be determined."
- (8) Immediately above the signatures of the Purchaser and of the Vendor, the Provisional Contract reads:-
- "To: Messrs (For insertion of Name of law firm)
- Please prepare a Sale and Purchase Agreement in accordance with the above terms. The Purchaser undertakes to pay all legal costs."
- (9) In the Provisional Contract there is a "Recommended Mortgage Bank" with telephone number and contact person.

The net effect of the provisions is clear. It is likely for the Purchaser to consider himself bound to instruct the named Vendor's solicitors and sign the formal Sale and Purchase Agreement within the next 4 days.

It is likely for Clause (iii) to give the Purchaser the following impression: If the Purchaser does not attend the office of the Vendor's solicitors, the Purchaser risks losing the bargain and 1.5% of the purchase price.



In law this is not true: A purchaser is entitled to choose any solicitors' firm to act for him. Set out below is a typical clause in the formal Sale and Purchase Agreement to be signed by the Purchaser at an office of solicitors:-

"Notwithstanding anything to the contrary hereinbefore contained the Purchaser shall at any time before the completion hereof be entitled to instruct any firm of solicitors of his choice to act for him in and about the Agreement for Sale and Purchase and the subsequent Assignment Provided always that the Purchaser shall in this event bear and pay the Vendor's Solicitors on behalf of the Vendor the costs of this Agreement at the full scale charge and the costs of the subsequent Assignment at half scale charge."

As the Purchaser could not have noticed such provision until he attended the Solicitors' Office, it is likely for the Purchaser to attend the Vendor's solicitors and sign the formal Sale and Purchase Agreement. Further, it is likely for the Purchaser to continue retaining the same firm of solicitors up to completion of the purchase because:-

- (1) the Purchaser would have to pay additional legal costs if he retains another firm of solicitors and if this firm charges legal costs for every conveyancing document in this connexion. The Purchaser would have to pay additional legal fee being the legal cost of the Sale and Purchase Agreement at the full scale charge and the legal cost of the subsequent Assignment at half scale charge. In the example shown in Appendix 1, full scale Sale and Purchase Agreement means \$1,750 and half scale



Assignment means \$6,575, totalling \$8,325. This is a significant sum of money to an average purchaser. The scale legal fee for Sale and Purchase Agreement and Assignment are shown in Appendix 2.

- (2) It is convenient to continue retaining the Vendor's solicitors, as the Purchaser has retained it at the stage of formal Sale and Purchase Agreement. Further, the Purchaser only has 7 days (from the date of the formal Sale and Purchase Agreement) to procure a mortgage loan before the last day for full payment of the balance of the purchase price. Since both the names of the Vendor's solicitors and of the Recommended Bank appear on the Provisional Contract, it is likely for the Purchaser to infer the 2 to have business relation so that the Purchaser may sign the mortgage deed at the office of the Vendor's solicitors by the deadline for full payment of the purchase price. In contrast, if the Purchaser retains another solicitors' firm, the Purchaser may have to take more trouble to obtain a mortgage loan, unless such solicitors' firm can arrange the same. In short, all is very convenient if the Purchaser retains the Vendor's solicitors to act also for the Purchaser.

From the above analysis it is clear that for first sale by Developers, a law firm should focus its marketing efforts on property developers. In other words, a law firm should try to create, maintain and develop business relation with property developers so that the law firm may be designated as the Vendor's solicitors in Developer's Provisional Contracts. "Property

developers" is the most important category of clients for "first sale by Developers" business. The writer suggests that a law firm should appoint a relationship manager for each property developer with which the law firm has business relation (see Chapter VI).

#### Subsequent Sale by Individual Owners

The more common type of Sale and Purchase of residential properties is sale by individual owners (subsequent to first sale by Developers).

A typical Provisional Sale and Purchase Agreement is shown in Appendix 3. Normally the process of buying a unit from an individual owner is as follows:-

- (1) A purchaser enquires from estate agents regarding available residential properties at prices within the purchaser's budget.
- (2) The estate agent discusses with the purchaser regarding the purchaser's requirements within the budget. Important considerations include property price, location, area, number of bedrooms, transportation, existence of common facilities (such as swimming pool) and view.
- (3) The estate agent suggests some available units for the purchaser's inspection.
- (4) The Purchaser inspects properties and negotiates with the Vendor price and other terms (e.g. quantity of furniture to be included in the purchase price; time for completion of the sale and purchase).
- (5) Both the Vendor and the Purchaser have reached an agreement.



- (6) The Vendor, the Purchaser and the estate agent sign a Provisional Sale and Purchase Agreement and the Purchaser pays an initial deposit (e.g. HK\$80,000 when the price is HK\$4,060,000).

Once the provisional Sale and Purchase Agreement is signed both the Vendor and the Purchaser are contractually bound by it.

- (7) The Provisional Sale and Purchase Agreement is in English and in Chinese and typically includes the following clauses:-

- (i) The formal Sale and Purchase Agreement will be signed within 21 days from the date of the Provisional Sale and Purchase Agreement, when the Purchaser will pay a further deposit (e.g. \$326,000). Normally the initial and further deposits add up to 10% of the purchase price.
- (ii) Completion of the Sale and Purchase will take place within two and a half months when the purchaser shall pay the balance of the purchase price, typically 90% of the price (e.g. \$3,654,000).
- (iii) On completion of Sale and Purchase, the Purchaser either:
  - (a) obtains vacant possession of the Property from the Vendor; or
  - (b) obtains entitlement to rent from a sitting tenant of the Property.



- (iv) In the Provisional Sale and Purchase Agreement there is space for filling in the names of the solicitors firms acting for the Purchaser and the Vendor respectively.

Normally the estate agent will ask the parties whether they wish to instruct their own solicitors or whether they would like the estate agent to recommend one for them.

It is possible for either the Purchaser or the Vendor or both parties to ask the estate agent to recommend a firm of solicitors. In such cases, the estate agent plays an important role from the viewpoint of solicitors firms. Estate agents can be an important referral source of conveyancing business to solicitors' firms.

- (v) The Purchaser shall pay agency commission to the estate agent on the signing of the formal Sale and Purchase Agreement. The Vendor may or may not have to pay agency commission. If so, the commission is normally payable when the Vendor signs the Sale and Purchase Agreement. (In Hong Kong, residential property market is a sellers' market. Hence it is generally for the Purchaser but not the Vendor to pay agency commission. In Canada and Australia generally it is for the Vendor of residential properties to pay agency commission but not the Purchaser).

- (8) On the appointed day the Vendor and the Purchaser go to their respective solicitors and sign the Sale and Purchase

Agreement. The Purchaser pays further deposit aforesaid and stamp duty. The amount of stamp duty represents a percentage of the Property price, ranging from HK\$20 to 2.75% of the purchase price. A table of stamp duty payable is shown in Appendix 4.

- (9) The Purchaser approaches banks for a mortgage loan to finance his purchase of the Property. Sometimes the Purchaser asks the estate agent to recommend a suitable bank for the Purchaser.
- (10) The Purchaser attends his bankers, provides income proof and other information and signs application forms for a mortgage loan. There the Purchaser informs the Bank the name of his solicitors. Then the Bank will advise the Purchaser whether such firm is on the Bank's list of law firms. If so, the same solicitors' firm may prepare the Mortgage Deed for the Bank. If the solicitors' firm is not on the Bank's list, the Bank will not instruct it to prepare a Mortgage Deed. The Purchaser must execute the Mortgage Deed in another law firm.
- (11) Immediately before completion of the Sale and Purchase the Purchaser through the estate agent makes an appointment with the Vendor to make a final inspection of the Property.
- (12) On the date of completion or shortly therebefore, the Purchaser attends the office of his solicitors. There the Purchaser signs the Assignment. If such firm happens to represent also the Bank in preparing the Mortgage Deed, the Purchaser signs the Mortgage Deed there and pays the Bill of his solicitors. If the Bank instructs another solicitors' firm



to prepare the Mortgage Deed, the Purchaser has to attend another solicitors' firm to sign the Mortgage Deed before drawdown of the Mortgage loan can be made.

- (13) the Purchaser obtains either keys to the Property or the right to receive rent from a sitting tenant on completion.

#### Brief Comparison Of The 2 Kinds of Conveyancing Process

For First Sale by Developers, the time for signing the formal Sale and Purchase Agreement and full payment of purchase price is unilaterally set by the Developer. The Purchaser either accepts it or cannot buy the Property. By contrast, for subsequent sale by individual owners, the time for these 2 stages is set through negotiation by the Vendor and the Purchaser.

From a law firm's point of view, the most significant difference between the 2 typical kinds of conveyancing process is as follows:-

	First Sale by Developers	Subsequent Sale by Individual Owners
Time* for formal Sale and Purchase Agreement	4 days	21 days
Time* for full payment of purchase price	11 days	two & a half months

\* from the date of Provisional Contract.

In the case of First Sale by Developers, the short period of time requiring:-

- (a) the signing of the formal Sale and Purchase Agreement; and
- (b) the full payment of purchase price

has significant effect on the Purchaser's choice of solicitors. The Purchaser has little or no time to seek his own solicitor. For convenience it is likely for the Purchaser to instruct the Developer's solicitors to represent also the Purchaser in the conveyancing transaction. By contrast, for sale by individual owners, the Purchaser has a lot more time to seek his own solicitors.



## CHAPTER IV

## ESTATE AGENTS AND BANKS AS REFERRAL SOURCES

Important Role of Estate Agents

From the above analysis it is clear that estate agents are an important referral source of conveyancing business to solicitors firms. A solicitors' firm recommended by the estate agent may be approached by a potential client if a Purchaser or Vendor asks the estate agent to recommend a law firm.

In Hong Kong most people do not have direct access to solicitors. On average there is only one solicitor out of 2,870 people in Hong Kong (see Chapter I). Further, not many people in Hong Kong acquaint with solicitors' employees.

Take the case of a Purchaser. He may be totally inexperienced in conveyancing transactions. The instant transaction is probably the most important single transaction ever in his life. He knows no solicitor or a solicitor's clerk. The Purchaser may discuss with his friends and relations who have had relevant experience to recommend a solicitors' firm. The Purchaser may also ask the estate agent to recommend a solicitors' firm for convenience.

Take the case of a Vendor. Although he has had conveyancing experience before (i.e. when he purchased his property and became a home owner), he may not get familiar with the responsible solicitor or clerk. After all he has had attended the law firm only two times: one for signing Sale and Purchase Agreement

and one for signing Assignment and Mortgage Deed. In addition, a period of time has lapsed since the Vendor last attended the law firm. The Vendor may not even have record of the address or phone number of that law firm.

Hence, it is common for Purchasers and Vendors to request estate agents to recommend solicitors' firms for the conveyancing transaction.

The writer recommends that a solicitors' firm should appoint a relationship manager for every key estate agent having business relation with the firm. In Hong Kong it is illegal for a solicitor to share his legal costs with a non-solicitor. Rule 4 of the Solicitors' Practice Rules Chapter 159 of the laws of Hong Kong prohibits generally the sharing of profit costs (i.e. legal fee income) "in respect of any business whether by way of paying or agreeing to pay a commission on business introduced by any such person not being a solicitor or otherwise". Hence it is illegal for a solicitor to pay commission or "kickback" to an estate agent referring business to the solicitor.

However a solicitors' firm may take the following steps to maintain and develop its relation with an estate agent:-

(1) Act promptly

As analysed above, the agency commission is payable by the Purchaser on the signing of the Sale and Purchase Agreement. If it is also necessary for the Vendor to pay agency commission, the same is payable when the Vendor signs the Sale and Purchase Agreement.



Hence, if a law firm acts promptly so that the parties can sign the Sale and Purchase Agreement in time, the estate agent can get its agency commission from the Purchaser (or also the Vendor) as soon as possible. It follows that a law firm should convince an estate agent that the law firm acts promptly, so that the estate agent is confident that it can get its agency commission as soon as possible from the purchaser (or also the Vendor) if the estate agent refers conveyancing business to the law firm.

(2) Refer business to connected estate agents

From time to time a solicitor may come across clients wishing to sell and/or purchase a property. In such case the solicitor may refer the client to a connected estate agent so that the solicitors' clients become potential customers of the Estate Agent.

Similarly the solicitor may refer his friends and relatives wishing to buy or sell properties to the connected estate agents.

(3) Provide complimentary legal services to connected estate agents

A law firm may provide legal services to a connected estate agent in various circumstances:-

- (a) From time to time some customers of an estate agent refuse to pay agency commission. Unless such customers happen to be a law firm's client (so that there is conflict of interest), the law firm may represent the estate agent

against the defaulting customer. The solicitor may provide legal advice to the estate agent, issue demand letters and institute legal proceedings on its behalf.

- (b) The law firm may draft standard form provisional Sale and Purchase Agreement for a connected estate agent, inserting provisions to protect the estate agent's interest.
- (c) The law firm may provide conveyancing services to a connected estate agent if its proprietors buy or sell properties.
- (d) The law firm may provide legal consultation generally to connected estate agent from time to time.

In order to maintain and develop its relation with a connected estate agent, a solicitors' firm may waive the legal fee for some of the services provided to a connected estate agent (within the limits of the relevant rules). In addition, the solicitors' firm should provide prompt and quality legal services to the estate agent. Furthermore, the solicitors' firm should appoint a relationship manager for every key connected estate agent. For details see Chapter VI below.

Whatever a solicitor does to maintain and develop its relation with a connected estate agent, he has to uphold his professional integrity. The solicitor owes his primary duty to his client (including the purchaser or vendor as the case may be, and the mortgage bank), not to the estate agent. If there is conflict of interest between the law firm's client and the estate agent (e.g. when a purchaser refuses to pay agency commission to the estate



agent), the law firm must bear in mind its primary duty to the Purchaser. This is a limit beyond which the solicitor may not go to please an estate agent.

#### Vertical Integration Unethical

The Code of Conduct for Solicitors prohibits a solicitor from directly or indirectly running business of estate agents or otherwise controls estate agents. Hence, vertical integration in the sense that a solicitor runs also the business of an estate agent (which may be a source of clients for the solicitor's legal practice) is not permitted. Consequently, the synergy effects of running both a solicitor's business and an estate agent's business cannot be utilized.

But for such ethical constraint vertical integration would have been a good idea: It is not expensive for a solicitor to run an estate agent business. One does not incur much expense in renting a small shop, employing 2 or 3 clerks, and advertising and promoting an estate agent's business.

#### Important Role of Banks

From a marketing point of view, it is necessary for a law firm to get its name in "the list of law firms" of as many banks as possible. If a law firm is not within a bank's list, the bank will not instruct the law firm to prepare mortgage deeds on its behalf. It is entirely for each individual bank to decide which law firm to include in its List.

Although it is the Purchaser-Borrower who pays a law firm legal fee for preparing a mortgage deed, the law firm's client is the Lender Bank, not the Borrower. In other words, the law firm's primary duty is owed to the Bank, not the Borrower, in the loan transaction.

In Hong Kong most property purchases are financed by mortgage loans. As purchase of a property involves huge amount of money, a mortgage loan is often required by a property purchaser.

There have been cases where a property purchaser shifts to another law firm because the law firm he had in mind cannot represent the bank offering him suitable mortgage terms. All conditions being equal, it is natural for a Purchaser to prefer attending 1 law firm for both Assignment and Mortgage to attending 2 law firms. It is likely for the Purchaser to incur more time in communicating with 2 law firms than with 1 law firm. Hence, once a purchaser learns that the preferred bank's List does not include a law firm, the Purchaser may shift to another law firm which may represent that bank.

It follows that a law firm should:-

- (a) get its name in as many banks' lists of law firms as possible;
- (b) be familiar with the target customers of every bank on the law firm's List of Banks;
- (c) enquire and understand a purchaser's mortgage needs at the earliest possible stage: whether the purchaser emphasizes on the greatest possible size of mortgage loan, on the lowest possible interest rates or otherwise;



- (d) introduce the purchaser to a bank in the law firm's List of Banks which may satisfy the Purchaser's mortgage needs.
- (e) appoint a relationship manager for every bank on the Law Firm's list (see Chapter VI).

In this way the law firm can be more confident that the Purchaser's bank is within the law firm's list of Banks.

To maintain and develop a law firm's relation with a connected bank, a law firm may take the following steps:-

(1) Act promptly

If a solicitor delays in preparing a mortgage deed, the borrower may shift to another bank so that the bank loses this piece of business. Hence a solicitor should act promptly in preparing Mortgage Deeds.

(2) Refer business to connected banks

A law firm is a good referral source of mortgage business of banks. In Hong Kong, banks compete to obtain mortgage business. In particular every branch manager of a bank normally has an annual quota set by his boss so that the manager is expected to advance a certain amount of mortgage loan in a financial year. A law firm may help a bank if it refers borrowers to the bank at the right time. By "right time" the writer means the time when the Banks needs business. By the end of a financial year the Bank's mortgage business may have met the pre-set quota. In this situation the Bank has no incentive to advance further mortgage loans. If the Bank

continues business in this area, the portfolio of the bank's business may be shifted to an imbalance: the proportion of home mortgage loans being too high. Thus a law firm should try to understand a connected bank's needs at different times of its financial year and satisfy the banks' needs.

(3) Provide complimentary legal services to connected banks

A law firm may provide legal services to a connected bank in various circumstances:-

- (a) From time to time a borrower may default in repaying a loan advanced by a bank. The law firm may provide legal advice to the bank, issue demand letters and institute legal proceedings on its behalf.
- (b) the law firm may provide legal consultation generally to a bank's officers on legal issues facing them from time to time.

In order to maintain and develop its relation with a connected bank, a solicitors' firm may waive the legal fee for some of the services provided to the bank (within the limits of the relevant rules).

If a bank has good relation with a law firm, the bank may on its own initiative refer its customers to the law firm. A connected bank is thus an important referral source of clients for law firms.



### Conclusion

From the above analysis, it is clear that a solicitor should focus its marketing efforts on:-

- (a) Developers for first sale by Developers; and
- (b) Estate Agents and Banks for subsequent sale by individual owners.

## CHAPTER V

### CONSTRAINTS ON MARKETING OF CONVEYANCING SERVICES

Traditionally marketing involves 4 'Ps': Product, Price, Place and Promotion. There are constraints on all of the 4 'Ps' for conveyancing services.

#### Constraints on Product

The basic product is approval of property title and preparation of conveyancing documents.

To many people in Hong Kong, conveyancing service is a homogeneous product. It makes no difference to them if a conveyancing document is prepared by law firm X or law firm Y. Buyers of professional services face the common problem of not being able to evaluate performance characteristics. There is a mystery and complexity associated with legal services that clients often do not comprehend. It is difficult for a client to evaluate a solicitor's performance even after purchase and use of conveyancing services<sup>16</sup>.

Normally a client cannot tell whether a title approval is good or bad, or whether a conveyancing document has been properly prepared. Thus there is little room for product differentiation by solicitors.

Nevertheless, solicitors can provide added values which lay clients can understand. These include:-



(a) Providing prompt service

A solicitor may act promptly to please a client.

(b) Reporting progress

A solicitor may report progress of the transaction from time to time to keep a client well informed.

(c) Arranging appointment well in advance

If a solicitor arranges an appointment well in advance, the client has more time to plan his own affairs.

(d) Arranging appointments at times convenient to clients

It is difficult for some clients to attend a solicitor's office during office hours because they cannot easily obtain leave from their boss. A solicitor can help if he arranges appointment for such client either during lunch hours or after normal office hours.

(e) Delivery of conveyancing services

In particular cases a solicitor or his clerk may meet a client outside the solicitor's office and deliver conveyancing services, e.g. at the client's home or a restaurant, thus bringing convenience to clients.

(f) Designing office atmospherics

Solicitors' offices may be designed to communicate confidence and other things that might be valued by the conveyancing clients<sup>17</sup>.

(g) Introduction of suitable banks

Different banks have different policies regarding home mortgage loans. Some banks decline business regarding aged properties (e.g. 20 years or over). Some banks offer low

interest rates for civil servants with government housing allowance. The maximum size of mortgage loan of a given property may differ from bank to bank.

A solicitor may familiarize himself with the update policies of various connected banks. The solicitor may ask a purchaser about his mortgage needs. The solicitor may then introduce a bank offering suitable terms to a purchaser or prospective purchaser. This helps the client and the solicitor. The client gets a mortgage loan with suitable terms regarding size of loans, repayment method, interest rate etc. The solicitor gets the bank's instruction to prepare a mortgage deed. The solicitor also brings a piece of business to the bank, thus enhancing his relation with the bank.

If the solicitor does not actively concern a purchaser's mortgage needs, the purchaser may apply for a mortgage loan from a bank not connected with the solicitor (which bank may offer terms similar to one of the solicitor's connected banks). In this case the solicitor may lose business regarding the mortgage deed because the purchaser's bank being an un-connected bank will not instruct the solicitor to prepare the Mortgage Deed. Even worse, if the Purchaser prefers to attend one instead of two law firms to sign the Assignment and the Mortgage, the Purchaser may shift to the Mortgagee Bank's solicitors for the preparation of the Assignment. In this case the former solicitor loses business for both conveyancing documents.



Further, before a potential client commits to purchase a Property, he may request a solicitor to enquire the probable amount of mortgage loan. In doing so, the prospective purchaser can better assess whether he can afford to purchase a particular property. If the solicitor provides the prospective purchaser with such information about mortgage loan, the solicitor can expect to get one more piece of conveyancing business, i.e. when the prospective purchaser has signed the Provisional Sale and Purchase Agreement and instruct the solicitor to prepare conveyancing documents.

#### Common Representation Generally Disallowed

As from May 1989<sup>18</sup> common representation by a law firm is generally disallowed. This means that generally a law firm may not represent both the Purchaser and the Vendor in the same conveyancing transaction. One rationale is that the Vendor and the Purchaser have potential conflict of interest. Principal exceptions to this general rule are:-

- (1) first Sale by Developers
- (2) where the purchase price is less than HK\$250,000.
- (3) where the Purchaser and the Vendor are close relatives or connected companies.

This is an important constraint on product. Generally a solicitor cannot get the conveyancing business from both the Purchaser and the Vendor in the same transaction. On the other hand, the general rule against common representation means that for every "subsequent sale by individual owner" transaction, normally 2 law firms will have conveyancing business.

### Constraints on Price

Solicitors (General) Costs Rules (Chapter 159 of the laws of Hong Kong) provide for scale costs for conveyancing business. "Costs" in this context is a technical term, meaning a solicitor's profit costs, i.e. legal fee.

Rules 3(1) provides that

"the scales of Costs set out in Parts I, II and III of the First Schedule shall be the Costs chargeable in relation to the non-contentions business to which they are respectively expressed to apply."

The word "shall" is used so that the scale fee is mandatory. A solicitor may not charge a fee below or above the scale fee for normal conveyancing work. However, if a solicitor has done additional work including negotiations, the solicitor is allowed to charge additional costs: See Rule 3(6) of the Solicitors (General) Costs Rules.

The net effect is that a solicitor is not allowed to charge below the scale cost for conveyancing work. For work done in addition to normal conveyancing work, a solicitor may charge additional costs. This is a constraint on pricing for conveyancing business.

Appendix 2 shows the scale costs for Sale and Purchase Agreements, Assignments and Mortgages. The amount of costs increases with the amount of the purchase price.

Take the example of the transaction shown in Appendix 3, where the purchase price is HK\$4,060,000.



Assuming a 70% mortgage loan is granted, (i.e. HK\$2,842,000), the legal costs payable to the Purchaser's solicitor representing also the mortgagee bank is as follows:

(a)	half scale Sale and Purchase Agreement	\$ 1,000
(b)	full scale Assignment	\$25,300
(c)	full scale Mortgage	\$19,250

		<u>Total: \$45,550</u>
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Assuming the Property is subject to an existing mortgage so that the Vendor must have the mortgage discharged, the legal costs payable to a Vendor's solicitor representing also the mortgagee bank is as follows:

(a)	half scale Sale and Purchase Agreement	\$ 2,000
(b)	full scale Assignment	\$12,650
(c)	full scale Discharge	\$ 1,800

		<u>Total: \$16,450</u>
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It is evident that a solicitor acting for a Purchaser generally receives more legal costs than acting for a Vendor. It is also evident that conveyancing business can bring handsome legal fee income for solicitors.

Constraints on Place

Rule 4A of the Solicitors' Practice Rules (Chapter 159 of the laws of Hong Kong) provides as follows:-

"A solicitor shall ensure that every office where he or his firm practise is and can reasonably be seen to be properly supervised in accordance with the following minimum standards:-

- (a) every such office shall be managed by a solicitor holding a practising certificate who shall normally be in attendance at that office during all the hours when it is open to the public; and
- (b) every such office shall be attended on each day when it is open to the public by a solicitor who holds a practising certificate and has been admitted for at least 2 years, being either a principal of, or a solicitor employed by, the firm and who shall spend sufficient time at such office to ensure adequate control of the staff employed there and afford requisite facilities for conciliation with clients."

The high standards of supervision requirement impose an important constraint on the number of a law firm's offices.

Further, Legal Practitioners Ordinance (Chapter 159 of the laws of Hong Kong) prohibits a solicitor acting as agent for a non-solicitor, so that a non-solicitor cannot undertake legal business provided to a solicitor. As discussed above, a solicitor is not allowed to share legal costs with a non-solicitor. Hence a



non-solicitor cannot lawfully be a partner of a law firm or otherwise have proprietary interest in it.

These constraints greatly affect the possible distribution strategies for conveyancing business. Unlike convenience stores where there can be hundreds of outlets, a law firm usually only has at most 4 offices.<sup>19</sup>

#### Constraints on Promotion

Traditionally solicitors in Hong Kong were not allowed to advertise their legal practice. However, with effect from 20th March 1992 such restriction has largely been removed by Solicitors' Practice (Amendment) (No.2) Rules 1992. Thus, advertising by solicitors is generally permitted, subject to the Solicitors' Practice Promotion Code. The Code is attached as Appendix 5.

The principal restriction on promotion is set out in paragraph 6 of the Code. Practice promotion shall be decent, legal, honest and truthful and shall not:

- be likely to mislead or deceive, whether by inclusion or omission;
- contain any adverse remark or implication concerning any other solicitor or solicitors, in particular in any comparisons of services, practice or fees;
- make any claim or imply that the solicitor is, or that his practice is or includes, a specialist or expert in any field of practice or generally. It is permissible, however, to refer to his knowledge, qualifications or experience;

- identify any client or any item of any client's business;
- be defamatory;
- refer to the solicitor's success rate;
- imply that a solicitor can obtain results by improper means;
- be intrusive, offensive or otherwise inappropriate having regard, among other things, to the manner, medium and frequency of approach, and to surrounding circumstances;
- be calculated or likely to take advantage of the weak or weakened mental, physical or emotional state of the recipient or intended recipient;
- take place in or in the immediate vicinity of a court, police station or place of detention in relation to the person who has been or may be charged with, or has been convicted of, any offence;
- be directed at a person who has made known a desire not to be contacted;
- be inappropriate having regard to the best interests of the public or of the solicitors' profession;
- breach any other code of advertising practice for the time being in force which applies to solicitors.

Any law firm wishing to promote his conveyancing practice must bear in mind the aforesaid restrictions. In particular, a solicitor may not advertise that he is an expert in conveyancing. It is permissible, however to refer to his knowledge, qualifications or experience.



Paragraph 7 of the Code provides as follows:

Prohibited Media

Practice promotion may not take the form of advertising or solicited promotion on television or radio, in the cinema, or on any hoarding or display in or readily visible or audible from a place to which the general public habitually has access (whether with or without payment). This restriction does not prohibit or restrict the display of (a) an appropriate nameplate outside the premises at which the solicitor practises or (b) the name and/or logo of a firm of solicitors on clothing worn at a sporting event by members of a team entered by the firm and their bona fide organizers and officials."

One sees that a solicitor may use media such as newspapers, magazines and yellow pages of telephone directories; but not media such as television or radio, in the cinema or on any hoarding.

## CHAPTER VI

### PRELIMINARY RESEARCH ON ADVERTISING OF CONVEYANCING SERVICES

#### Introduction

In order to assess whether advertising helps a solicitor promote his conveyancing service, the writer has conducted interviews on 2 advertising professionals. Further, an advertisement copy was designed with the help of an advertising professional in line with paragraph 6 of the Practice Promotion Code aforesaid. No expertise is claimed. As most people in Hong Kong are Chinese, the advertisement is in Chinese. The advertisement and its English translation are reproduced in Appendix 6.

#### Research Objective

. The research objective is to obtain preliminary information on whether a person having had conveyancing experience will instruct that law firm in case of conveyancing needs. In other words, the objective is to test whether there is positive or negative response to the advertisement.

#### Methodology

Since the new rule permitting advertising came into effect only recently, i.e. 20th March 1992, there is significant time constraint for the writer to research extensively on this issue. Because of the limited resources, the writer conducted a preliminary research by producing the advertisement copy to 6 current home



owners (i.e. people who have purchased conveyancing services). The 6 respondents were told that the advertisement appeared on a newspaper namely Sing Tao Jih Pao (which is commonly known to contain most advertisements about sales of real estate). The writer asked each respondent how he felt and whether he would instruct the law firm Si Tai Lung and Solicitors (which is a fictitious name) in case he needs conveyancing services.

#### Research Findings

The responses are divided.

##### (1) Positive Response

2 respondents say the advertisement serves as a source where the reader has access to a conveyancing solicitor. AS solicitors in Hong Kong have different areas of practice (litigation, conveyancing, shipping, etc.), it is unlikely for a person seeking conveyancing service to "walk-in" any law firm and ask.

##### (2) Negative Response

4 other respondents infer that the law firm Si Tai Lung & Co., Solicitors must have insufficient business. The 4 respondents say they have never seen a solicitor's advertisement. They suspect that the law firm may not be very decent. 1 respondent asked, "If Si Tai Lung & Co. is a decent law firm, why does it advertise? I have never seen any advertisement by solicitors."

### Conclusion

In view of the divided responses, the writer recommends against advertising of conveyancing services at this stage. The reasons are as follows:-

- (1) People in Hong Kong are not accustomed to advertising by solicitors. In countries including U.S.A. and Australia, advertising by solicitors is common. People in Hong Kong need to take time to accept such phenomenon. It may be unwise to be among the first law firms to advertise. A damaged image can be irreparable.
- (2) It is uncertain whether advertising helps bring conveyancing business. An advertisement may bring positive or negative image. The benefits are uncertain while the costs are certain: A law firm must pay for the advertising expense.

Some advertising professionals opine that the law firm which first advertises gets most benefit because the impact is greater than subsequent advertisements by other law firms. However advertising professionals have an inherent self-interest. Advertising of conveyancing services is an area of potential business for advertising professionals. The self-interest may hinder their objectivity. A law firm should bear this point in mind when discussing this issue with an advertising professional.



## CHAPTER VII

### RELATIONSHIP MANAGEMENT

#### Objective

The constraints on conveyancing product, price, place and promotion mean that there are limits on marketing techniques of conveyancing services. However, a law firm may focus its marketing efforts on relationship management. Research findings suggest that effective relationship selling will be most critical when the service is complex, when buyers are relatively unsophisticated about the service and when the environment is dynamic and uncertain in ways that affect future supply and demand. For details see Relationship Quality in Service Selling: An Interpersonal Influence Perspective by Lawrence A. Crosby, Kenneth R. Evans, and Deborah Cowles, Journal of Marketing Vol. 54 (July 1990), pp.68-81. As the conveyancing market in Hong Kong has the above characteristics, effective relationship management is important in the marketing of conveyancing services.

Research has shown that relationship quality appears to increase the probability of sales opportunities. Interpersonal influence variates (e.g. expertise and similarity) determine individual sales outcomes. All other things being equal, more sales opportunities should yield higher sales performance.

Hence a law firm should develop an objective to maximize sales opportunities. One way is to enhance relationship quality with connected Developers, estate agents and banks.

### Managerial Implications

To achieve the above objective, a law firm should<sup>20</sup>

- (1) Hire only those contact employees (e.g. solicitors, clerks and receptionists and other employees having direct contact with Developers, estate agents, banks and clients) with the right social abilities that facilitate establishing and maintaining long-term personal relationships.  
Social abilities include communications skills, being sociable and extrovert rather than being introvert.
- (2) Encourage and teach trust-building activities on the part of all contact employees;
- (3) Appoint a relationship manager for each of the firm's major clients and referral sources including Property Developers, Estate Agents and Banks;
- (4) Develop a corporate mission that emphasizes on satisfaction of clients' needs.

The relationship manager's activities can take a lot of forms: meals, karaoke entertainment, golf, tennis, swimming or other activities with each major account and referral source from time to time. In doing so, the relationship manager can have first-hand knowledge of the conveyancing and other needs of each major account and referral source.



## CHAPTER VIII

### CONCLUSIONS AND RECOMMENDATIONS

#### Summary

From the above analysis, it is evident that the residential property market is booming. Hence the demand for conveyancing services increases. Conveyancing services bring substantial legal fee income for many law firms in Hong Kong. It is also evident that because of the increasing competition, a law firm needs to market its conveyancing services to maintain and develop its market share.

In first sale of properties by developers, a law firm should focus its marketing efforts on Property Developers. For subsequent sale of properties by individual owners, a law firm should focus its marketing efforts on estate agents and banks. Estate agents and banks can be important referral sources of conveyancing business. Such recommendations are comprehensible when one analyses the typical conveyancing processes of the 2 types of transactions.

There are special constraints on conveyancing services on product, price place and promotion. The writer suggests that a law firm should not readily make use of the newly acquired freedom to advertise its conveyancing services, until encouraging findings are shown by an extensive market research focusing on the potential clients' response to advertising by solicitors. The preliminary research above-mentioned shows that advertising by solicitors can

possibly bring negative image to a law firm: A respondent may think that the advertising law firm must have insufficient business. A damaged image can be irreparable.

The writer recommends that a law firm should develop a corporate mission on the satisfaction of the needs of important clients and referral sources. Thus a law firm's marketing efforts should not focus on product, price, place or promotion but on the identification and satisfaction of clients' needs. It follows that a law firm should consciously make itself a market-driven organization focusing on clients' needs rather than the '4Ps'.

Partners of a law firm should develop a corporate culture with such mission in mind in every move of the law firm.

The writer further recommends that a law firm should emphasize on relationship management. The law firm should appoint a relationship manager for every major developer client, connected bank and connected estate agent. The relationship manager may have various activities with them: meals, karaoke entertainment, golf, tennis, and other activities. In this way the law firm can have first-hand knowledge of their conveyancing and other needs. the law firm can then satisfy such needs and develop a better relation with them.

Implementation of relation management requires the law firm to recruit only those contact employees with the right social abilities. The implementation also requires the law firm to encourage and teach trust-building activities on the part of all contact employees.



If a law firm adopts the above recommendations, the writer expects that it can better compete in the conveyancing market in Hong Kong.

#### Limitations of Present Study

There is an inherent obstacle in the study of marketing approaches of professional firms, like law firms. There is a tendency for those involved with marketing professional services to keep silent about many of their approaches out of fear of losing some type of "competitive edge"<sup>21</sup>. This is one limitation of the present study.

Another limitation is that given the time and resource constraints on the writer, only a preliminary research on advertising of conveyancing services has been conducted.

#### Implications for Future Research

An advertising professional interviewed by the writer opined that advertising definitely helps conveyancing business, provided that proper execution of the advertisement is done. He also opined that whichever law firm takes the first move gets most benefit. However, the writer has some reservation on this. A professional in the advertising trade has an inherent personal interest in advocating for advertising of conveyancing services, because advertising means more business to the trade. A law firm should bear this in mind when an advertising professional persuades it to advertise its conveyancing services.

The next step will be a more extensive market research focusing on the possible effects of an advertisement of conveyancing services. In particular, the study should seek to answer two questions which are not adequately dealt with in the present study:

- (1) Should advertising of conveyancing services be done by law firms?
- (2) If so, how should the advertising be executed?

Given a better understanding of the above questions, a law firms can tell whether it should use its newly acquired freedom to advertise and if so, how the law firm should use such freedom.



## TYPICAL PROVISIONAL CONTRACT OF UNITS IN AN UNCOMPLETED RESIDENTIAL DEVELOPMENT

## 臨時合約

## PROVISIONAL CONTRACT

賣方律師 Vendor's Solicitors

26/F Jardine House

1 Connaught Place

Hong Kong

(Tel: 8477888, Attn.: Mrs. )

NO. S.V.C.M.10.1 044067

DATE 6/11/90

SOLICITOR CODE W 2 0 1

SALES REPRESENTATIVE: K. Y. C. K.

賣方: Vendor: SILVER COSMOS CO. LTD.		賣方代表: 長江實業地產代理有限公司 中環大道中29號產人行十一樓 電話: 810-1818 Sales Agent: CHEUNG KONG REAL ESTATE AGENCY LIMITED China Building, 21/F, Hong Kong (Tel. 810-1818)	
買方姓名: Purchaser(s): Hung Tak Wing		中文	身份證: I.D. No.: E966101(1)
買方地址: Address: 3/F J3 South Wall Road Kowloon		Tel No: 電話: 7162688	Person to Contact: 聯絡人
訂購樓宇地點及名稱: Location & Name of Building: SCENEMAY GARDEN Nos. 1-17 Sceneway Road, Lam Tin, Kowloon. (N.K.I.L. 6046)			
Block(s) 座別	Floor(s) 樓次	Unit(s) 單位	Saleable Area 實用面積 Price 價格
13	..	E	HK\$ 1,629,500..
Garage(s) 車位			HK\$
總售價: Total Contracted Price:			HK\$ 1,629,500..
付款辦法: Payment Terms:-		to be paid upon signing of this Provisional Contract. to be paid on or before 10/11/90 to be paid on or before 13/11/90 to be paid on or before to be paid within 14 days of the Purchaser being notified in writing that the Vendor is in a position to validly assign the Unit to the Purchaser.	
(1) HK\$ 30,000.. (2) HK\$ 132,950.. (3) HK\$ 1,466,550.. (4) HK\$ (5) HK\$ HK\$ 1,629,500..			
<p>* Condition (3):</p> <p>If the Purchaser fails to sign the Agreement and/or pay any of the further deposits and balance of the purchase price as aforesaid, the Vendor shall be entitled to sell the above-mentioned premises to other party and to refund to the Purchaser the amount of any Preliminary Deposit already paid by the Purchaser less an amount not exceeding 1.5% of the purchase price of the above-mentioned premises in respect of which he signed the Provisional Contract. In that event, this Provisional Contract shall be determined.</p> <p>(3) 買方倘逾期不列律師樓辦理簽約手續或未於時限內付各期樓款，賣方除有權將此樓宇轉賣他人外，並有權從買方已交之定銀中扣除樓宇或不及還應已時合約列之之總樓價百分之一點五作作賠償，同時此臨時合約亦告失效。</p> <p>(The Vendor reserves the right to resell any units or to determine the purchase price referred to and the amount of the purchase price shall be as stated in the Agreement for Sale and Purchase to be prepared by the Vendor's Solicitors.)</p>			

## 附帶規條: Other Terms and Conditions

Recommended Mortgage Bank: Dah Sing Bank Ltd.  
Tel: 5218118, Person to contact: Mr. Johnny Ho

- 於簽署此臨時合約時買方應交小定。  
A Preliminary Deposit has been paid on signing of this Provisional Contract.
- 買方同意於 天內與上述律師樓訂立正式買賣合約。同時交付上列所訂之款。並將此臨時合約交出。  
The Purchaser agrees to attend at the named Solicitors' Offices, within days from the date hereof to sign a formal agreement for the sale and purchase, to pay the above-mentioned deposit and to produce this Provisional Contract.
- 買方須於上述律師樓辦理簽約手續。如買方不列律師樓辦理簽約手續，則此臨時合約即告失效。  
If the Purchaser fails to sign the Agreement and/or pay any of the further deposits and balance of the purchase price as aforesaid, the Vendor shall be entitled to sell the above-mentioned premises to other party and to refund to the Purchaser the amount of any Preliminary Deposit already paid by the Purchaser less an amount not exceeding 1.5% of the purchase price of the above-mentioned premises in respect of which he signed the Provisional Contract. In that event, this Provisional Contract shall be determined.
- 買方須交付按樓價訂定之樓印費、辦理買賣合約及樓契之律師費及其他應交付之款項。  
At signing stamp duty on the Assignment shall be borne by the Purchaser. All Vendor's Solicitors fees and disbursements in respect of the preparation of the agreement for the sale and purchase and of the assignment shall be borne and paid by the Purchaser.
- 本臨時合約內所有列出之指定時間乃全文及最重要之部份。  
Time shall in every respect be of the essence of this Provisional Contract.
- 買方如有更改通訊地址及電話，請以書面通知賣方。  
The Purchaser shall inform the Vendor in writing of any change in correspondence address and telephone number.
- 本臨時合約之中文譯文僅供參考，如有爭論，仍以英文本為準。  
The Chinese version of this Provisional Contract is for information only and in case of dispute the English version shall prevail.

致:

請就樓上列條款辦理訂買賣合約事宜。一切律師費及有關費用，概由買方負責。  
Please prepare a Sale and Purchase Agreement in accordance with the above terms. The Purchaser undertakes to pay all legal costs.

買方簽名:   
訂購人 Purchaser

長江實業地產代理有限公司  
CHEUNG KONG REAL ESTATE AGENCY LIMITED  
(Sales Agent For The Vendor)

Authorized Signatures

## TEMPORARY RECEIPT

茲收到上述初步定銀 30000 元正此據  
Received the above scheduled Preliminary deposit of  
HONG KONG DOLLARS  
HK\$ 30000  
Cash/Voucher No. 017131  
Bank HSBC Pacific

樓價已收 (Payment received as imprinted)



## SCALE LEGAL FEE FOR SALE AND PURCHASE AGREEMENT ASSIGNMENT AND MORTGAGE

ASSIGNMENT AND MORTGAGE COST

Under	\$100,000	.....	\$1,800
\$100,000	to \$150,000	.....	\$2,450
\$150,000	to \$200,000	.....	\$3,100
<del>\$200,000</del>	<del>to \$250,000</del>	<del>.....</del>	<del>\$3,750</del>

\$100 per \$10,000

\$260,000	.....	\$3,850
\$270,000	.....	\$3,950
\$280,000	.....	\$4,050
\$290,000	.....	\$4,150
\$300,000	.....	\$4,250
\$310,000	.....	\$4,350
\$320,000	.....	\$4,450
\$330,000	.....	\$4,550
\$340,000	.....	\$4,650
\$350,000	.....	\$4,750
\$360,000	.....	\$4,850
\$370,000	.....	\$4,950
\$380,000	.....	\$5,050
\$390,000	.....	\$5,150
\$400,000	.....	\$5,250
\$410,000	.....	\$5,350
\$420,000	.....	\$5,450
\$430,000	.....	\$5,550
\$440,000	.....	\$5,650
\$450,000	.....	\$5,750
\$460,000	.....	\$5,850
\$470,000	.....	\$5,950
\$480,000	.....	\$6,050
\$490,000	.....	\$6,150
\$500,000	.....	\$6,250

\$75 per \$10,000

\$510,000	.....	\$6,325
\$520,000	.....	\$6,400
\$530,000	.....	\$6,475
\$540,000	.....	\$6,550
\$550,000	.....	\$6,625
\$560,000	.....	\$6,700
\$570,000	.....	\$6,775
\$580,000	.....	\$6,850
\$590,000	.....	\$6,925
\$600,000	.....	\$7,000
\$610,000	.....	\$7,075
\$620,000	.....	\$7,150
\$630,000	.....	\$7,225
\$640,000	.....	\$7,300
\$650,000	.....	\$7,375
\$660,000	.....	\$7,450
\$670,000	.....	\$7,525
\$680,000	.....	\$7,600
\$690,000	.....	\$7,675
\$700,000	.....	\$7,750
\$710,000	.....	\$7,825
\$720,000	.....	\$7,900
\$730,000	.....	\$7,975
\$740,000	.....	\$8,050
\$750,000	.....	\$8,125
\$760,000	.....	\$8,200
\$770,000	.....	\$8,275
\$780,000	.....	\$8,350
\$790,000	.....	\$8,425
\$800,000	.....	\$8,500

\$810,000	.....	\$8,575
\$820,000	.....	\$8,650
\$830,000	.....	\$8,725
\$840,000	.....	\$8,800
\$850,000	.....	\$8,875
\$860,000	.....	\$8,950
\$870,000	.....	\$9,025
\$880,000	.....	\$9,100
\$890,000	.....	\$9,175
\$900,000	.....	\$9,250
\$910,000	.....	\$9,325
\$920,000	.....	\$9,400
\$930,000	.....	\$9,475
\$940,000	.....	\$9,550
\$950,000	.....	\$9,625
\$960,000	.....	\$9,700
\$970,000	.....	\$9,775
\$980,000	.....	\$9,850
\$990,000	.....	\$9,925
\$1,000,000	.....	\$10,000

\$1,000,000	to	\$5,000,000	\$10,000 plus \$50
			for every \$10,000
\$5,000,000	to	\$50,000,000	\$30,000 plus \$25
			for every \$10,000
\$50,000,000	to	\$100,000,000	\$142,500 plus \$12.50
			for every \$10,000
\$100,000,000			\$205,000 thereafter
			discretionary

AGREEMENT COST

Under \$100,000	.....	\$ 800
\$100,000	to \$250,000	..... \$1,000
\$250,000	to \$500,000	..... \$1,250
\$500,000	to \$1,000,000	..... \$1,500
\$1,000,000	to \$2,000,000	..... \$1,750
\$2,000,000	to \$5,000,000	..... \$2,000
\$5,000,000	to \$10,000,000	..... \$2,500
\$10,000,000	.....	\$3,000

REASSIGNMENT COST

Under \$100,000	.....	\$1,100	
\$100,000	to \$250,000	.....	\$1,300
\$250,000	to \$500,000	.....	\$1,600
\$500,000	.....		\$1,800
Unlimited consideration	.....		\$1,800

TENANCY AGREEMENT COST

annual rent not exceed \$6,000	.....	\$ 800
"        \$6,000 to \$12,000	.....	\$1,000
exceeds \$12,000		\$1,000 plus 1% of the extra

DEFERMENT COST

Under \$250,000 .....	same as mortgage
\$250,000 to \$500,000 ....	\$3,750 plus \$75 for every \$10,000
\$500,000 to \$1,000,000 ...	\$5,625 plus \$50 for every \$10,000
\$1,000,000 to \$5,000,000 ..	\$8,125 plus \$25 for every \$10,000
\$5,000,000 to \$50,000,000 ..	\$18,125 plus \$12.50 for every \$10,000
\$50,000,000 to \$100,000,000	\$74,375 plus \$7.50 for every \$10,000
\$100,000,000 and over .....	\$111,375 thereafter discretionary







APPENDIX 4

## TABLE OF STAMP DUTY

Revised Stamp Duty Rate of Conveyance of Immovable Property

W.e.f. 1 April 1988 ( i.e. the date of Assignment )

<u>Consideration</u>		<u>Stamp Duty</u>
<u>Exceeds</u>	<u>Does not exceed</u>	
—	\$250,000	\$20
\$250,000	\$270,057	\$20 + 10% of excess over \$250,000
\$270,057	\$500,000	0.75% thereof
\$500,000	\$544,130	\$3,750 + 10% of excess over \$500,000
\$544,130	\$1,000,000	1.5% thereof
\$1,000,000	\$1,062,520	\$15,000 + 10% of excess over \$1,000,000
\$1,062,520	\$1,500,000	2% thereof
\$1,500,000	\$1,655,180	\$30,000 + 10% of excess over \$1,500,000
In any other case		2.75% thereof



SOLICITORS' PRACTICE PROMOTION CODE

Code effective 20 March 1992 promulgated by the Council with the prior approval of the Chief Justice under Rule 2AA of the Solicitors' Practice Rules.

Definitions

1. In this Code "practice promotion" in relation to a solicitor means the marketing by whatever method of that solicitor, his practice or his firm or the professional legal services offered by him or it, and includes (a) any exposure, whether or not paid for, in any public medium, (b) the issue of any publication or communication (including orally) in any medium to any client, prospective client or the public generally which has the character of an advertisement or promotional material, (c) any public appearance, and (d) any contact with a prospective client initiated by or on behalf of the solicitor.

Scope of this Code

2. This Code relates to all forms of practice promotion by or with the permission of a solicitor.
3. Subject to this Code a solicitor may engage in practice promotion in any way he thinks fit.
4. All practice promotion must have regard to the Solicitors' Practice Rules and other professional obligations and requirements, and nothing in this Code shall be construed as authority for any breach of those Rules, obligations or requirements.
5. It is the responsibility of each solicitor to ensure that his practice promotion, whether conducted by himself or by other persons, complies with the provisions of this Code. The responsibility cannot be delegated. Where a solicitor becomes aware of any impropriety in or in relation to any practice promotion on his behalf, he must use his best endeavours to have it rectified or withdrawn as appropriate. Any practice promotion activity relating to a solicitor shall be presumed, subject to proof by the solicitor to the contrary, to have been issued (in the form in which it was issued) with his authority.

General Principles

6. Practice promotion shall be decent, legal, honest and truthful and shall not:
  - be likely to mislead or deceive, whether by inclusion or omission;
  - contain any adverse remark or implication concerning any other solicitor or solicitors, in particular in any comparison of services, practice or fees;

- make any claim or imply that the solicitor is, or that his practice is or includes, a specialist or expert in any field of practice or generally. It is permissible, however, to refer to his knowledge, qualifications or experience;
- identify any client or any item of any client's business;
- be defamatory;
- refer to the solicitor's success rate;
- imply that a solicitor can obtain results by improper means;
- be intrusive, offensive or otherwise inappropriate having regard, among other things, to the manner, medium and frequency of approach, and to surrounding circumstances;
- be calculated or likely to take advantage of the weak or weakened mental, physical or emotional state of the recipient or intended recipient;
- take place in or in the immediate vicinity of a court, police station or place of detention in relation to a person who has been or may be charged with, or has been convicted of, any offence;
- be directed at a person who has made known a desire not to be contacted;
- be inappropriate having regard to the best interests of the public or of the solicitors' profession;
- breach any other code of advertising practice for the time being in force which applies to solicitors.

#### Prohibited Media

7. Practice promotion may not take the form of advertising or solicited promotion on television or radio, in the cinema, or on any hoarding or display in or readily visible or audible from a place to which the general public habitually has access (whether with or without payment). This restriction does not prohibit or restrict the display of (a) an appropriate nameplate outside the premises at which the solicitor practises or (b) the name and/or logo of a firm of solicitors on clothing worn at a sporting event by members of a team entered by the firm and their bona fide organizers and officials.

#### Extraterritorial Practice Promotion

8. Any practice promotion outside Hong Kong shall comply with any relevant regulations applicable to legal practitioners admitted to practise in the jurisdiction in which the promotional activity is undertaken. Otherwise, this Code does not apply to practice promotion outside Hong Kong.



### Records

9. A solicitor shall retain a copy or record of each item of promotional material authorized by him for not less than one year after publication.

### Interpretation and Variation

10. That the Council may from time to time by resolution published to the profession draw attention to examples of practice promotion which in the opinion of the Council constitute breaches of the general principles and intent of this Code. Any practice promotion effected or continued after the promulgation of such advice would be regarded by the Council as a breach of this Code.
11. The Council shall have power to waive a breach, or to condone a prospective breach, of any of the provisions of this Code in any particular case.

## APPENDIX 6

CHINESE ADVERTISEMENT FOR CONVEYANCING SERVICES  
AND ITS ENGLISH TRANSLATION

造 ■ 樓 ■ 契

經驗豐富                      專業服務  
並提供銀行按揭諮詢

■ 史泰龍律師行  
香港中環交易廣場  
一座 9208 室

歡迎致電蔣小姐  
888 8888

## PREPARATION OF CONVEYANCING DOCUMENTS

Abundant experience                      Professional service  
Consultation on bank Mortgage Loans

■ Si Tai Lung & Co., Solicitors  
Room 9208, Tower 1  
Exchange Square  
Central  
Hong Kong.

Please phone Ms. Chiang  
888 8888



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